

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL LSO 2/2016

29 July 2016

Dear Mr. Ralepoma,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/12, 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received concerning the shooting of Mr. **Lloyd Mutungamiri**, editor of the Lesotho Times newspaper.

According to the information received:

In September 2014, Mr. Mutungamiri, journalist and editor of the Lesotho Times newspaper, who has been very vocal in criticising the Government was charged with criminal defamation for reporting on police corruption. His case has not been brought to court yet.

On 24 June 2016, Mr. Mutungamiri and another journalist of the Lesotho Times were interrogated by police investigators regarding the sources for an article entitled "Exit strategy for [REDACTED]". The article focused on [REDACTED], the Commander of Lesotho's Defence Forces. They were both denied access to their lawyers, despite their requests. Mr. Mutungamiri was released on the condition that he reports himself again on 27 June 2016. The police confiscated his Zimbabwean passport without any specific reason, court order or as a part of bail conditions. On 27 June 2016, Mr. Mutungamiri reported to the police; was briefly interrogated and released. He was given his passport back. On 5 July 2016, Mr. Mutungamiri and two other colleagues of the Lesotho Times were charged with defamation and crimen injuria.

On Saturday 9 July 2016, at around 11 p.m., Mr. Lloyd Mutungamiri was shot four times by gunmen as he arrived at his home in Ha Thamae, Maseru. He is in critical condition and hospitalised at Queen Mamohato Memorial Hospital. On 12 July 2016, he was transferred to a hospital in Bloemfontein, South Africa. Apparently, a few weeks earlier Prime Minister [REDACTED] accused him of being too critical of his administration.

This incident has taken place in an environment of harassment and intimidation against journalists.

We express grave concern about the shooting of Mr. Mutungamiri, which appears to be directly related to the exercise of his right to freedom of expression during the performance of his profession as a journalist and editor of Lesotho Times. We express further concern about the criminalization of expression through the use of defamation charges. In particular, we express concern at the abuse of criminal provisions to target expression that is deemed critical and that relates to issues of public interest, having a deteriorating effect on the independence of the media and on civil society space as a whole.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the shooting of Mr. Mutungamiri. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide the full details of any prosecutions which may have been undertaken in this case.
3. Please provide information about the justification for bringing charges of defamation against Mr. Mutungamiri, Mr. [REDACTED] and Mr. [REDACTED], and how such charges are compatible with the right to freedom of expression under article 19 of the ICCPR.
4. Please provide information of any measure that may have been taken in order to protect journalists and human rights defenders in Lesotho, as well as measures to ensure that they can operate in a safe and enabling environment.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the protection of Mr. Mutungamiri and the journalists in the country and to prevent the re-occurrence of any other violence incident against the victim or any other journalist. Finally, we urge for the investigation of the events described and to ensure the accountability of any person(s) responsible for the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Ralepoma, the assurances of our highest consideration.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your attention to the following human rights standards:

The above mentioned allegations appear to be in contravention of articles 3 and 19 of the Universal Declaration of Human Rights and 6 (1) and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Lesotho on 9 September 1992, which respectively guarantee the right of every individual to life and security, not to be arbitrarily deprived of life and the right to freedom of opinion and expression.

The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents or by private persons or entities. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. These obligations arise notably in respect of criminal acts under international law, such as torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance.

We would like to remind your Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

There is also a clear obligation on States to investigate, prosecute and punish human rights violations arising from Article 2 (3) (a) of the International Covenant on Civil and Political Rights, which provides that "Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."

With respect to the right to freedom of expression, we would like to highlight that paragraph 3 of article 19 of the ICCPR sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law. We express concern at the criminalization of expression through repressive legislation. We would like to remind your Government that criminal sanctions, in particular imprisonment for libel and defamation, are not deemed proportional with an effective exercise of the right to freedom of expression. In this respect, we reiterate the recommendations made in the report E/CN.4/2000/63. We would also like to refer to the

Human Rights Committee's General Comment 34, which states that in the context of political discourse, involving public figures, the value placed upon the Covenant upon uninhibited expression is particularly high. The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties (CCPR/C/GC/34).

We would like to refer your Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;